IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3880 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT MARITIME BOARD

Versus

MANISH DILSUKHLAL DAVE

Appearance:

1. Special Civil Application No. 3880 of 2001

MS SEJAL K MANDAVIA for Petitioner No. 1-2

MR RA MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/08/2004

ORAL JUDGEMENT

1. The petitioner has challenged the order dated 30-9-2000 passed by the Labour Court, Amreli in Reference

Case (LCA) Old No. 29/95), new Reference (LCA) No. 420/1998, whereby the Labour Court has set aside the order dated 22-2-1993 retrenching the respondent workman, and further directed the petitioner Board to reinstate the workman on his original post of Work Charge Clerk with continuity of service and with 100 % backwages.

2.1 I have gone through the evidence on record. Labour Court has come to the conclusion that after the retrenchment order passed against the respondent workman, the Board appointed certain persons in the same post and did not call the respondent workman as required under section 25-H of the I.D. Act. Therefore the order of reinstatement passed by the Labour Court is just & proper.

3.1 In view of the fact that the petitioner was appointed on the post of Work Charge Clerk, therefore provisions of section 25-F of the I.D. Act will not be applicable in view of the fact that it is not retrenchment in view of provisions of section 2 (oo) (bb). In this view of the matter the order of the Labour Court for backwages is required to be modified to the same extent.

4.1 The petition is partly allowed. The petitioner Board is directed to reinstate the respondent workman to his original post of Work Charge Clerk with continuity of service within one month from today and pay the salary from 30-9-2004 till reinstatement.

4.2 The petitioner Board will not pay any back wages for the period from 22-2-1993 to 30-9-2000 in view of the fact that the petition is partly allowed.

4.3 The order of the Labour Court is modified to the aforesaid extent. The respondent workman shall be reinstated in service with continuity of service but without any backwages for the period from 22-2-1993 to 30-9-2000, i.e. from the date of retrenchment till the date of award of the Labour Court. However the Board is directed to pay arrears of salary to the respondent workman from 1-10-2001 till the respondent is reinstated.

5.1 At this point, Ms. Sejal Mandavia, learned advocate for the petitioner objected for salary from the date of reference till today in view of the fact that respondent has not filed affidavit under section 17-B. In view of the fact that I am upholding the order of reinstatement, the workman is entitled for arrears of salary from the date of judgment & award till the date of

reinstatement of respondent by the petitioner. Since the request made by the advocate for the petitioner is not in consonance with the provisions of law, same cannot be accepted and is rejected.

6.1. Accordingly, this petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

Dt: 26-8-2004 (K.S. JHAVERI, J)

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